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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,013	11/21/2001	James E. Johanson	8945-25 (149194)	2419

7590 09/09/2004

Thomas J. Durling
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

EXAMINER

LE, TAN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/990,013

Applicant(s)

JOHANSON ET AL.

Examiner

Tan Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-16 and 18-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 2, 7-16 and 18-24 is/are rejected.
7) ☒ Claim(s) 3 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

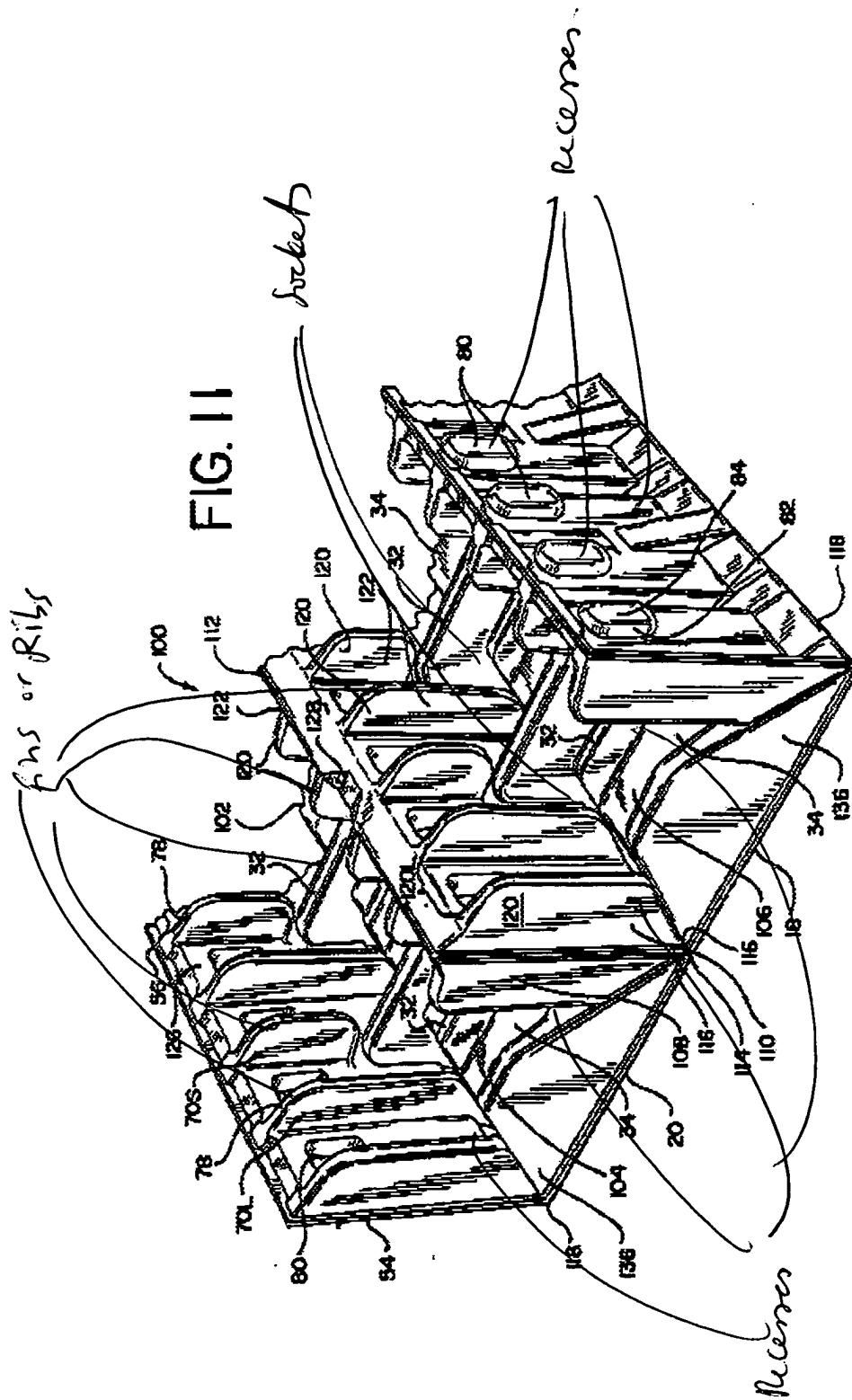
1. This is the fourth office action for serial number 09/990,013. Claims 1-3, 7-16 and 18-24 are pending. Claims 4-6 and 17 were previously canceled.

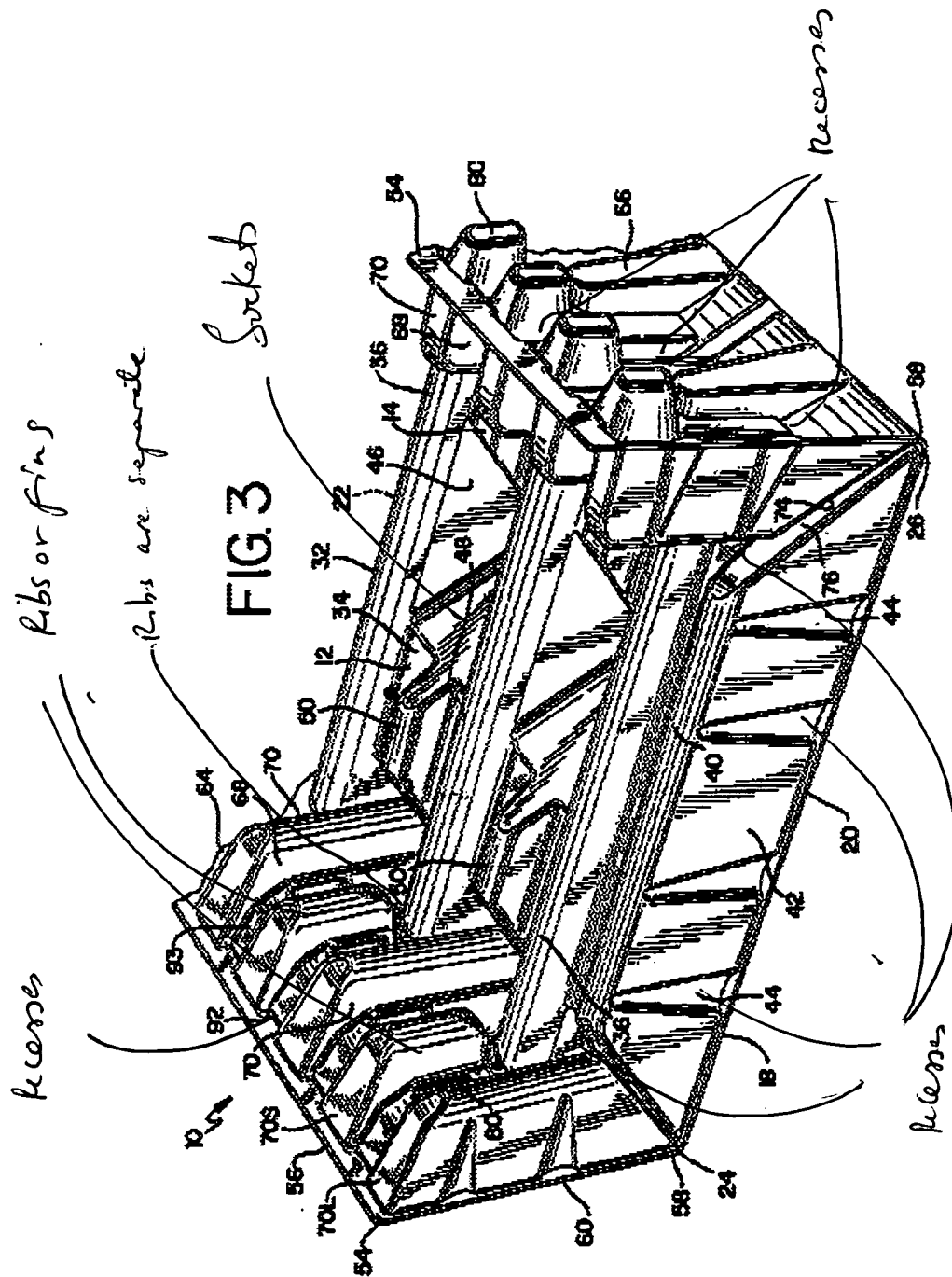
Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-9, 10, 1-2, 7, 11-12, 13-14, 15-16, 18-19 and 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,010,007 to Moren et al.

Moren et al. discloses a base for packaging an article comprising a frame (10) (Figs 3 or 11 for example) having four sides and an outer peripheral edge of each of the sides of the frame being recessed (see marked-up copy below) relative to the inner portion of the base along the corresponding side, the recess being created a gap between the base and the adjacent portions; the base having at least one socket; a plurality of flexible ribs or fins (70, 70S, 70L) extending along the internal sidewall of the socket and projecting inwardly into the well of the socket; wherein the ribs are beveled adjacent the upper edge of the socket and the bottom edges of the ribs are separated from the bottom wall of the socket.





Response to Arguments

3. Applicant's arguments filed on June 16, 2004 have been fully considered but they are not persuasive.

Applicants' argument that Moren et al. does not disclose a base for shipping and supporting an appliance or an article. In response, the examiner respectfully asserts that the recitation "for shipping and supporting an appliance or an article" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of an invention, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicants also argue that Moren et al. does not disclose the four sides of the packaging "are adapted to extend along four sides of an appliance" and one or more sockets "for receiving the feet of the appliance" as argued on page 2, paragraph 3 of the remarks. In response, examiner submits that the phrases "adapted to extend along four sides of an appliance" or "for receiving the feet of the appliance" are merely recited the intended use of the structures and the intended use of the structure of the claimed invention must also result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If

the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). It has also been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d (1987).

Applicants have further argued that there is no suggestion that the interior of Moren's packaging is suitable for receiving the foot of an article the sides of which extend along the sides of packaging, or any foot at all. As mention above, since the intended of the invention is not positively and structurally claimed and there are no additional teachings or criticalities regarding the size of the foot of an article to be used in order to be supported in the sockets of the base. This would have led a person of ordinary skill in the art to have had a reasonable expectation of any suitable sockets can be used as long as they are suitable for receiving the foot of the article. Morten's packaging can be suitable for receiving the foot of an article the sides of which extend along the sides of the packaging or any foot.

Examiner has reconsidered claim 3. Claim 3 recites limitation, which does not appear to be readable on Moren et al. Claim 3 is therefore, allowable if rewritten to include all of the limitations of claim 9.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244. The examiner can normally be reached on Mon. through Fri. from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
August 27, 2004.



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER